

FATAWA MORTGAGE 2006

Giving Help to Riba-Based Mortgage Transactions

Subject: Mediation in Riba-based Mortgages

From: Sr. Nawal through Islam online

Sent: Wednesday, November 15, 2006 12:01 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I have recently started business as mortgage broker. Assisting people and small business in getting loans. Either for personal use or investment. Q1. As Mediator is integrate part of the mortgage transaction. So that will qualify him/her to be a witness or a writer, who is mentioned and cursed by the Prophet (peace and blessings be upon him) in the Hadith Q2- Is purchasing house/ investment & Business via Finance/interest is considering Riba for Muslim who lives in non-Muslim country, such as USA. And what the definition of riba? Please kindly specify your answer regarding those matters, since your prior answer regarding those matters was slightly confusing to me at your prior fatwa on line.

Visitor Notes: Dr. Monzer Kahf, I need your gaudiness. I know it's hard to say haram / or halal but I need your help. And please feel free to email me Nawal@young-mortgage.com. I need to make decision right now. And the fatwa below really very confusing to me PRIOR FATWA -----When you mediate in Riba-based mortgages, I cannot say your service and income are specifically haram because this is not specifically one of the four cursed persons as mentioned by the Prophet (peace and blessings be upon him): the taker, the giver and the two witnesses. But I don't want to just say that because it is very close to being a witness or a writer (the word?writer? came in a version of the Hadith. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Nawal

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I say clearly: working as an interest-based mortgage broker is much closer to be Haram than permissible for the following reasons: Living in the USA, there are many Muslims for whom going for interest-based mortgage may be permissible but you can't restrict your services to help these only, can you? While giving advice on which mortgage is less expensive is not Haram, a mortgage broker can't avoid writing a mortgage application, carrying for processing and very often signing it as a writer or adviser. I therefore go for avoiding this kind of a job for any Muslim. Interest is clearly and definitely "any increment in a loan." If there is no loan, there is no interest. Here what matter is the fact not the form but financing with reward is not Haram in Shari'ah although it may appear, in figures, similar to Riba, as Verse 2:275 refers to.

Finally conventional mortgage as practiced in the USA is Riba-based not a single drop of doubt about it. However, we can formulate Shari'ah-based contracts that appear to a superficial person similar to interest.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Facilitating Closing Attorney in the Mortgage/Lending Process

From: Abdullah through Islam online

Sent: Wednesday, July 05, 2006 7:34 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

As a practicing real estate attorney, one major aspect of my practice is to close real estate transactions. A typical situation arises (whether it be commercial or residential) when a buyer and/or seller come to my office and request that I help them in "closing" the transaction. They may use my trust account for the deposit that they will be placing to show their good faith in buying the property from the Seller. After this is done, I order survey's to be performed, have inspections performed, and perform a review of the title on the property and issue a commitment which states that I insure that the title to the property is in fact in the name of the current owner and is in fact owned by the current owner without any other interests or claims against the title. On the day of closing I facilitate the real estate transaction between the buyer and seller and make sure documents are executed correctly and collect and distribute funds related to the closing. I also represent the Title Insurer's interests as I am technically the Title Insurer's "agent" in insuring the title to the property is good until the documents are recorded (Title insurance is a requirement in institutional lending, although it is not required for private lending), and also I represent the lender's interests and I am technically also the lenders "agent" since I have to follow their instructions in regards to what documents need to be signed and what to do with the money they deposit with me.

Furthermore, I have to make sure that the buyer and the seller are informed and protected throughout the transaction. There are two issues that are of concern, one is that I witness or notarize most of the documents (including the promissory note and mortgage) and the other is that our trust account (which we cannot play around with) acts as the holding pot for deposits and we are to distribute the funds as instructed to the respective parties (this includes property taxes, insurance premiums, fees for inspection and survey and also at times the origination fees and interest on the first month of the loan for the lenders). I have closed for various organizations which are supposedly "Sharia-compliant" mortgage companies and engage in the same process described above, even as it comes down to collecting the first month of the loan's "profit" (as supposed to conventional "interest") at closing. Although I am convinced that the structure of these "Shari'ah-compliant products based on Musharakah (co-ownership/partnership) or ijaar (lease to purchase) are different than the structure for borrower-lender relationships, in the end many a times I have to convince my clients of the same, even though U.S. regulatory requirements may make them look the same. A prime example of this is that a document called the "Truth In Lending Statement" has to be produced to homebuyers, since an APR (Annual Percentage Rate) and a resulting interest rate must be disclosed to the buyer, even if it is ""profit"" instead of "interest." The bottom line is that I

engage in the same process for both types of mortgages. Nevertheless, I am still concerned about witnessing and the fact that the money has to be received and distributed by me. Is my involvement as the facilitating closing attorney in the mortgage/lending process prohibited? Can you provide any other insights or advise. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Abdullah

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

It seems to me that notarizing an interest-based mortgage amounts to being a witness to it and this is included in the Wrath of God that is mentioned by the Prophet, pbuh. This part of your action is not permissible in Shari'ah. Most likely also not permissible is handing over the main document of the loan and the money that is part of it (interest and principal, first month or other). On the other, reviewing the documents seem to be permissible, even advising the signatories about their mutual obligations (although interest based) seem to be not included in the Haram per se. Certainly there is a big difference between the co-ownership/Ijarah arrangement and the mortgaged loan and the procedural matter of the annual Percentage Rate doesn't matter. It is a percentage of financing charge not interest. Financing charge, call it whatever you like, is permissible as long as the contract is not loan based.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Buying Investment Property on Conventional Mortgage

Subject: Mortgages to buy investment property

From: Mohamed through Islam online

Sent: Sunday, September 24, 2006 5:23 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I am writing to you with regard to taking a mortgage to invest in a property to rent in the future

I own a property and live in UAE, the property i own is in UK and i am trying to buy a second one and may be more in the future to secure a source of income for myself in my old age and to my kids education in the future. I tried to go with Islamic type mortgages, however these type are first of all of a very high interest rate, non flexible, with non known banks (might end up corrupted), the use the concept of that the bank buy the property, then the bank will rent it to me for a 25 years, following to that you I will own the property. The non Islamic deals will also let me pay toward the property in 25 years then i can own the property by the end of the term (25 years), with lots of flexible approaches and easier to deal with.

I am finding it much easier to go with a non Islamic (even the so called Islamic bank use the same finance rules) bank to take a mortgage against buying a property. Please note that few years back

even buying your first home using a mortgage was considered Haram, After Dr Qaradawi talked about it, it is halal now. does that mean that may be in a few years time the second house will be non haram because some body will think deeply that all the deals are the same??

please advise thanks Best Regards

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Mohamed

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I don't think so! you know that buying a residence is a kind of necessity but attempting to become rich (even when you call it for retirement or for kids education!) is not a necessity, otherwise you will be discarding the text of the Qur'an that prohibits Riba. Further, the rule of necessity and its application to interest and other areas is as old as the Islamic Shari'ah itself, it is not a new development, evolution or change in the rules? There will be no change that will make what is Haram Halal, please be assured about it!

Riba is prohibited and Muslims are required to abide by that and invent means of financing that avoid Riba. Besides, it is incorrect to think of the new Islamic banks as unknown or obscure, Islamic banks (there are 2 of them) in UK are licensed by the Bank of England and practice their financing in the open transparency under the supervision of the B of E. If their profit/rent rates are high now why don't you and your colleagues establish an Islamic bank and compete with them to reduce the rates?

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Taking Mortgages to Buy a Residence in Western Countries

Subject: Purchase homes with Interest

From: Riffat

Sent: Tuesday, January 24, 2006 9:41 AM

Question

Dear Dr. Khaf, Assalamuallaikum,

I heard that you have said somewhere in an article that buying a home in Canada or USA as long as you have no other means is ok to buy using a mortgage and I have been trying to find this article can you please provide me a copy? Regards

Riffat

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Riffat

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh Please refer to my Fatawa on my website www.kahf.net or in www.Islamonline.net, there is something like that.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: house loans

From: Diana

Sent: Wednesday, November 01, 2006 6:32 PM

Question

Asalam Aulikum,DR. Monzer,

My Brother in law stated you had told him he doesn't need to refinance his home? I was planning to refinance the house with DEVON Bank under the Murbaha Contract.

I recall 2 years ago you had insisted that the loans that were done were all Haram. I am curious on what bases is it now permissible? Kindly let me know, Jazak Allah Khier,

Diana

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Diana,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I don't remember what I said tow years ago in Austin but I doubt I said that house financing is Haram outright. Details as follows:

1. Interest-based house and other financing is definitely Haram because interest is the same Riba that is prohibited in the Qur'an and the Sunnah.
2. Housing is an essential Human necessity and there are many situations where buying a house (in contrast to renting that fulfills the basic necessity too) is very much needed (although it is still below the level of necessity). this need applies in North America to the great majority of Muslim families for many reasons that include: quality of schooling, security, residential stability, reasonable minimum comfort, taxes, financial stability and building equity, etc. The rule in Shari'ah is that A NEED THAT APPLIES TO A LARGE NUMBER OF PEOPLE IS TREATED AS IF IT WERE A NECESSITY.
3. Therefore, whenever Islamic financing is not available or not accessible (including being substantially more expensive), it is then permissible to resort to conventional mortgage in application of the principle that NECESSITIES CALL FOR RELAXATION OF PROHIBITION. This is the essence of the Fatwa of the Second International Conference on Fiqh in North America that was held in Detroit in the Fall of 1999 and was chaired by Shaikh Qaradawi.
4. What I mentioned to Bassel was based on this because he mentioned that it will be substantially expensive for him to switch at this point because the rate he got on his present

house mortgage is very low. I also know that Devon Bank adds extra charge for Islamic financing!

Please feel free to write again if you need any more details and give my Salam to your father and husband.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: ISLAM AND INSURANCE Zakah and Mortgage

From: shabbir

Sent: Friday, October 06, 2006 7:30 PM

Question

Dear Bro. Monzer, As-Salaam-Aleikum,

My name is Shabbir and I live in Canada.

I would be very grateful if you could please advise me whether insurances such as Life and Medical are allowed in Islam.

Secondly, on the issue of Zakaat, if say in 2005 my cash balance in the month of Ramadhan was 30,000 and my debts were 10,000 and I paid zakaat on 20,000.00, what will be the zakaat payable in the month of Ramadhan of 2006 when my cash balance has increased to say 40,000 from 30,000 but my debts of 10,000 have remained the same. In other words my net worth has increased by ten thousand.

Third, is it permissible for one to buy a house on mortgage for personal use? Your favorable response will be greatly appreciated. Jazaak-Allah Your brother in Islam

Shabbir

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Shabbir,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

1. Insurance is controversial, I stand with the opinion that it is permissible provided the contract is not interest-based and the subject of insurance is permissible (e.g., whole life insurance is normally interest-based and insuring a liquor shipment is not permissible).
2. Your Zakah question is not clear. Long term debts are not deductible from Zakatable assets when you calculate Zakah. If the 10000 debt of last year is the same of this year, you should have not deducted it last year. Now you need to recalculate last year's Zakah accordingly and pay the difference and make this year on the same basis. A debt that is deductible must be one that is going to be paid in the future (i.e., after the day of calculation) but out of the existing assets on the day of calculation. Debts that are payable out of future revenues/incomes such as mortgage debts are not deductible. On the other hand, if the debt of last year was paid then a new debt arises that is going to be paid out of the 40000 you have for this year, then

what you've done last year is correct and you can deduct the present debt if it is going to be paid out of this 40000.

3. Conventional mortgage is not permissible if Islamic financing is available to you. If Islamic financing is not available and you need to buy a residence and you don't have the amount readily available you may then resort to conventional mortgage and then you make your effort to pay it ASAP.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Buying a House through Mortgage

From: Mohaned through Islam online

Sent: Monday, September 25, 2006 11:43 PM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I live in Canada, I bought a house through a mortgage four years ago, in those four years the price of the houses in my area doubled, this year with the renewal of the mortgage, I found it a good opportunity to increase the mortgage amount based on need for renovation, which is far lower in rate and more comfortable in payment than renovation mortgage. I took into consideration that it is as if I sell a share of the house to the bank?mortgage institute? I did many renovations but not all, because the other renovations will be postponed for couple of years, is it lawful to use this money left for other purpose, as pay cars, mortgage payments?etc.? Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. mohaned,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I believe that renovation mortgagee is not covered by the Fatwa on the permissibility of getting a conventional mortgage if one does not find an Islamic financing for the necessary house to live in. Renovation is not necessary. Therefore the general principle still applies that taking an interest-based loan is one of the most grave sins in our Religion. The only way you can do now is to rid yourself of this additional mortgage as soon as possible by using this left over and any other funds toward this purpose.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Buying a House through Non-Islamic Mortgage

From: Heiba through Islam online

Sent: Tuesday, September 05, 2006 12:59 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I am a muslim living in Europe. I need to buy a house through non islamic mortgage but I may move from my city in every 2 years or so to anathor city. My question is: Can I rent it?? then if not, what should I do?? GAZAKOM ALLAHO KAYRAN. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Hieba

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If you buy in accordance with the known Fatwa on buying residences and you find yourself qualified for this Fatwa, whenever you move to another area you don't have to sell that house and you can rent it. Obviously you are not abusing the rule by moving intentionally only for the purpose of buying another house and renting this one.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Buying a House in the Netherlands

From: A Brother through Islam online

Sent: Monday, July 17, 2006 4:11 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I have a question about buying a house. In the moment we are a family of 6 persons (my parents, two sisters and my wife) living in The Netherlands in Europe. Next year we will be with 8 persons as my brother and his wife will join us. The house where we live in now is a rented house and is getting too small for us all (it has 3 bedrooms, a living room and an attic).

Renting is xpensive, especially if you want to have a big house that is big enough for our family.

We are considering the option of buying a house. This has advantages and disadvantages. An

advantage is that we can afford to buy a big house, paying less money than we would have to, if we were to rent a big house or two smaller houses, since we desire to live together in one house. A

disadvantage is that with buying a house we will have a debt and we will have to pay interest which is haram. My question is : is it lawful within Islam to buy a house to be able to live with the whole family in one house instead of renting a big house (or two houses) which is more expensive? In the

moment there are no islamic banks in the Netherlands. Could you inform us the best way to take, following the path that pleases God, the path God has chosen to be the best? Thank you for your answer. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br.

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Allah, Ta'ala, will not please to have you remain poor or in a rented house if buying is better for your family. Therefore we must all take all measures, within the limits of Shari'ah, to save on our expenses and make more money on the income side. If there are no Islamic finance facilities where you live and you cannot convince a conventional bank to give you financing in ways that conform with the Shari'ah, the Fatwa Council of Europe and the Second International Conference on Fiqh in America studied this matter and resolve that under such circumstances for a residential house to live in it is permissible to take an interest-based mortgage and try to pay it as soon as possible.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: No interest for a year and home mortgage

From: mohamed

Sent: Friday, June 30, 2006 10:37 PM

Question

Salam Alaykum Dr Monzer

My Name is Mohamed, and i live in sydney Australia, brother i have a few questions that I really hope you can answer forme inshallah. I'm always on the islam online website and alhamdulillah it has helped me clarify a few things. My first question is, There are retail companies who advertise that you can purchase anything from their store on a 24 month interest free plan, you pay no deposit, no payments and no interest till that 24 months are over, you can pay it off though within the 24 months, and if you do it would mean you didn't pay any interest on the product, a Sheik here says that it is haram to use this system because we are signing into an interest agreement, i wondered what your thoughts where on that?.

My second question is, I brought an apartment 4 years ago using the conventional banks, that means im paying interest, may Allah(SWT) forgive me, the reason i took out the loan was before i had purchased the apartment i had asked the Mufti of our area if it was ok, since I was going to get married, and the home was not for an investment, he told me it was fine to purchase a home by interest based loans from the bank as long as i buy it to live in it, now there are some Sheiks who say no, it is haram and i'm with them, that is why i have my home for sale, so that i get rid of paying interest inshallah, we have an Islamic bank in Sydney by the name of MCCA, who people say use the rent method, their website is www.mcca.com.au <<http://www.mcca.com.au>>, just wondering if you could check them out for me and give me your opinion on them, as i wouldn't mind keeping the apartment i live due to the fact that it is right across the road from the main mosque in sydney, and it is in the heart of the islamic community in Sydney, the street i live in is 98% muslim owned alhamdulillah.

Dr Monzer please forgive me for the long questions, Inshallah may Allah(SWT) reward you for your efforts and help. I have another question which i will send to you in a later date inshallah. Jazakum Allah

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Mohamed

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

You need to realize that each Muslim is required to make certain level of Ijtihad, the least of it is to research about whom to ask for Fatwa. There are always different opinions on any given issue and it is your personal responsibility to select and determine your own criteria for this selection.

- 1) My opinion about sale with no interest for a certain period is: If you are sure about yourself that you will pay on time, it is permissible to take this advantage. What you sign is a contract that is Haram to issue but not Haram to accept and you only accept it. This means that a Muslim institution is not permitted to issue a contract to its customers with this interest condition. But it is permissible for a Muslim to accept this contract because the interest clause is optional and the choice is left to you. For you, it amounts to signing on accepting a choice between a permissible action and a Haram action. Would it be not permissible to say I accept if someone gives me a choice of "you either drink alcohol or drink milk"? would I be sinful if I accept this choice? Definitely not! However, we must not forget the condition that I am sure of myself that my choice will never be the Haram under all circumstances (this can easily be confirmed now by giving authority for auto deduction from my bank account or ordering my bank to make payment on time, I can schedule it on the internet banking even a year or more in advance). By the Way, this is my view about credit cards too.
- 2) For buying residences for Muslims who live in the West, I go along with the Fatwa of the Second International Conference on Islamic Fiqh in America (1999) that is the same as the Fatwa of the Islamic Shari'ah council of Europe that ""when Islamic finance institutions or Islamic contracts from conventional institutions are not available or obtainable, it is permissible for Muslim families who live in such countries and need housing (as small Muslim minorities) to buy homes on conventional mortgage. If you are one of these, you may apply this Fatwa.
- 3) I don't give personal opinions on Islamic institutions; but you can always judge for yours if you apply these 2 tests: 1) do they have a Shari'ah advisor whom you trust; and 2) does the contract itself (not advertisement papers and flyers) say ownership and rent in contrast to interest and loan.

Finally I know there are many local non specialized prayers leaders who give other views!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Taking a Loan to Buy a New House

From: Waleed through Islam online
Sent: Tuesday, June 27, 2006 3:06 AM
Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
We currently own our house but due to work we have to move to a City that is a lot more expensive. In order to live at the same level as we currently are (in a good suburb with the same quality home) we would need to take out a loan. I am not trying to get something better; I just want to maintain the same and not go backwards. I want my children to attend a good school and you must live in the immediate area in order for them to gain admission. Can I do this? Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Waleed

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If you live in the West, it seems that the Fatwa of the Second International conference on Fiqh in North America that was held in 1999, may apply to your case. it resolves that if there are no Islamic alternative financing, a Muslim family that lives in America and needs a house may take a conventional mortgage.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Shall We Go for Mortgage?

From: A Sister through Islam online
Sent: Saturday, May 20, 2006 7:37 AM
Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Me and my husband currently live with my parents we also have a child, but we need to buy a home of our own now. I do not want to take a mortgage out my husband is applying pressure that i do so. He does not want to rent a place. we only wont to get something to cover our heads with a flat. So we contacted all the Islamic Lending available in the UK and the maximum they can offer us is not enough to buy a 2 bedroom flat only a 1 bedroom. Were as other lenders have said they can offer us the amount we need to buy a 2 bedroom flat. Now i really really don't want to do this as i am very afraid of Allah and what will happen. My husband wont really reason with me and says it is not haram and we are allowed to do so. My friends say it haram that's it nothing else to i what do I do. I have tried to reason with my husband but he wants to do this. I pray that Allah forgives me, but i see no option but to do it. Please help. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr.

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If you need the two bedroom flat and you don't find an Islamic finance for it, it is ok to go for conventional according to the Fatwa about Muslims who live in non-Muslim majority countries.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Taking a Debt to Have a House

From: Isam through Islam online

Sent: Wednesday, May 10, 2006 9:13 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I'm a Moroccan teacher. i'm planning to get married soon in chalah. the problem is that i can't live with my parents in the same house because of many considerations (my mother says that she insists to remain alone with my father because she is ill and tired+ I have many brothers at the same house). there is a state organisation which gives a debt of 4.5 percent to construct a house. my question is : is this debt to construct a house which is necessary for me a riba? If yes what s the alternative knowing that renting houses here is not that cheap? and is it true that yussef alqaradawi allowed people in need to take a debt from a bank to purchase an ordinary house where to live? jazakoumou lahou khayran

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Isam,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Muslims, when they are in large number living close to each others as in Muslim countries are required to get together to create institutions that help them make financing according to Shari'ah. Islam prohibits all kinds and forms of interest even when it is for a good cause like building houses and regardless of the rate of interest, low or high. Besides, to the best of my knowledge, Shaikh Qaradawi has no fatwa that interest is ok for buying or building houses. His Fatwa is for Muslim communities in non-Muslim countries and it is based on their inability to create Islamic finance institutions. It does not apply to Muslim countries or large and concentrated Muslim communities.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: house from the bank in Canada Halal or Haram?

From: Sr. Hanadi Islamic Horizons

Sent: Tuesday, April 11, 2006 9:41 AM

Question

Assalamou alaicom, I need a Fatwa:

To buy as house from the bank in Canada Halal or Hram Acheter une maison en amérique Ã travers la banque!?

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Hanadi

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If you mean buying a house with financing from a bank on interest basis, the answer is YES, It is forbidden to buy a house with interest-based financing unless there is a necessity or quasi necessity. This issue was discussed in the Second International Conference on Islamic Fiqh in North America held in Detroit in the Fall of 1999 and the meeting, in presence of Shaikh Yusuf al Qaradawi, resolved that: For Muslim families who live in the West that do not find suitable Islamic finance providers through contracts that are compatible with the Shari'ah and cannot find conventional banks that give them financing according to Islamic Shari'ah, it is permissible to resort to conventional mortgage financing for buying their residences. Residence is considered necessary and although buying (compared to renting) is not a necessity but it is a kind of general need that is treated as necessity because it encompasses a large number of Muslims. Please apply these rules and find out if you qualify to use this Fatwa.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Your advice on mortgage question kindly requested

From: Arshad

Sent: Thursday, March 09, 2006 9:32 PM

Question

Dr. Kahf; Assalaam Wallukum.

We had the privilege of hearing your weekend lecture in Cincinnati, Ohio in February, 2006.

Thank you very much, you taught us quite a bit. We need your guidance on our specific situation. I read through many of your cases on your web-site but did not find one similar. Here is our situation.

1. We purchased a house 1.5 years ago with a mortgage through a western bank, as we were not very knowledgeable about riba at that time.

2. We rented out our house as soon as it was built, and currently live in an apartment. The apartment is small and all 3 children (girl age 14, boys ages 13 and 12) share 1 bedroom. I am very uncomfortable with this arrangement, and do not think it is proper - separate issue. We had planned to move into the house when we are in a better financial situation, which is soon, inshallah.

3. We are uncomfortable with the fact that our mortgage is riba-based. We would like to transfer to an Islamic Financial Institution, but if we do, our payments will increase by about \$350 per month because our old interest rate was very low and we paid only 10% down. We would not be able to afford the house if we changed to Islamic Financing, nor would we be able to easily rent it out to cover the monthly payments and taxes. Islamic Co-operatives in Cincinnati is not an option as they cannot accommodate an amount of \$250,000.

4. I have been told by some of my muslim brothers, though not scholars, that we should refinance through Islamic Financing, when this mortgage term expires (in 3.5 years).

Question: Should we get out of our Riba mortgaged house right away, even if it means we not being able to afford the house, or can we wait until the mortgage term expires and then transfer?

We should, inshallah, be in a more stable financial situation at that time, and would be able to better absorb a difference between western bank rates and Islamic rates. Jazza Allah Khair.

Arshad

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Arshad

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Thank you for writing me and I want you to please notice that Islamic financing should be within the market range (sometimes and all times one may find some exceptional deal in the market that isn't usually there but the market range remains a good guide). Therefore if a company offers an Islamic rate that cost 350 per month more than a conventional rate for an amount of 250,000 it is not Islamic but exploitative and exploitation is also Haram!

My suggestion is that it seems to me, under the circumstances that you mentioned, that the Fatwa about resorting to conventional mortgage may apply to your case and it is ok then to continue the existing mortgage and move to your new house. When it comes close to expiration search for an Islamic alternative, you may then find one InShaAllah within the market range and take then an Islamic financing contract.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Getting a Conventional Mortgage for a Short Period of Time

From: Reda through Islam online

Sent: Monday, February 13, 2006 1:49 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Bismi Allahi arrahmani arrahim. Dear Scholars can you please clarify and if possible give me a definite answer to my Question which is in regards to Mortgages. I live in the UK I have just married, the house we live in is a 1 bedroom house and we pay £600 rent a month. I have approached islamic banks for Mortgage (Amannah finance), as I do have about 15% of the value of the house. even then they said I wont be able to afford it based on my salary, and it is true I will not be able to afford it at this time. I approached conventional Banks for conventional Mortgages and they offered us a good mortgage with repayments that we can actually afford and it will give us the chance to buy a bigger house than the one we live in. in regards to darurah of the matter, My wife is finishing her studies at University and she cannot actually do her work properly because of the lack of space, we are happily married but the space issue gets to us and sometimes gets in the way of our marriage. I have asked about this and I was told that I do not have a darurah in this case because I have a roof to live under. My question is as follow, My intention is to get a conventional mortgage for a short period of time to get the space and get a house which we can actually call home, inchallah and with allah's help improving our financial situation we will move to an islamic mortgage when we can afford it, I am working towards getting a better higher paid job? Second is my situation a darurah or is it not? Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Reda

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Necessities are things that create a substantial harm, if they are not available, to either of the five fundamentals that are: life, religion, mind, property and posterity. I don't believe that your case is a necessity. But wait a minute!

your question is partially incorrect because it is not necessity that matters, it is rather reasonable convenience (al Hajah) if it applies to a large number of people! This is called in Islamic literature "al Hajah al 'Ammah" that is convenience that encompasses many people. You case is not unique, brother! it is about the same for most Muslim families in the UK, USA, Canada and many other countries in the West. Such a Hajah 'Ammah is given in our religion the same treatment as necessities that apply to individual persons.

According to the Fatwa of the European Fatwa Council and the Fatwa of the Second International Fiqh Conference held in Detroit the Fall of 1999 your case allows you to take a conventional mortgage because the Islamic one is not available to you. By the way, I treat an Islamic mortgage offer of a higher cost or of difficult conditions as non-existing. And for your personal case, the Islamic financing is within that range as you said in your letter.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Taking Loan to Build a House

From: Osman through Islam online

Sent: Thursday, February 02, 2006 6:32 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
I'm United Nations staff member. We have been paid our salaries through UN Bank,. It has branches all over the world. Membership is restricted only to UN staff. It is NON-Profit, Cooperative Financial institution. It was established mainly to serve UN staff. It offers loans for house, education and cars. I'm thinking of taking loan to build a house. They take 9% interest from the total amount. The amount is to be paid back within 8 years. They justify the interest to cover management/rentals expenses. Now, I need to know if this is Halal or Haram. I know a lot of Muslims who have taken loan from this institution, But need to verify. Thank you very much for your great support. God bless you and all Muslims. Osman A. Elawed United nations Angola /South Africa.

Visitor Notes: Please note. That installment they take from salary. The loan requires no warranty. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Osman

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Permissibility or non-permissibility can't be taken from what people do, Muslims or otherwise! The Shari'ah determines permissibility. Interest is Haram for any reason and for any cause and under all circumstances. Of course, there are situations of necessity whereby any prohibition (actually except one, murder) may be relaxed! Buying a house is not a necessity, especially for a person who can pay for it in 8 years and also especially for South Africa where there is an Islamic bank, and also especially that you are paying 9 % and the market rate is much lesser! Does it make a Muslim violate the commandments of God if some other Muslims disobey God and His Messenger? There are many who Obey God too and they make much better examples!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Bought a house on interest in the USA, What to do about already paid interest?

From: Mohamed

Sent: Thursday, September 28, 2006 3:16 PM

Question

AlSalaam Alik Dr. Kahf

With my sincere apologies, I meant to ask you on a financial matter. I bought my house in 1992 with a loan from a local bank. Although I paid it off quickly in five years I obviously paid interest on the loan. What should I do regarding the interest, I think I can find out how much it is? Am I to pay Zakah on it? At the time I did not know of Islamic banks in the U.S. nor did I research the issue. JAK for your patience with me

Mohamed

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Dr. Mohamed

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I suppose you live in the USA and you have a family and children. Most likely the Fatwa about buying residences applies to you. It says that Muslim families in the West that need residences because of many reasons are permissible to use conventional mortgages if there are no Islamic financing available to them. The basis of this Fatwa is two folds: necessities call for relaxation of prohibition and needs (lesser than necessities) that relate to a large number of people are treated the same as necessities in this regard.

However, the General rule that I quoted earlier "Good deeds wipe away bad actions" is what applies here. There is no specific Kaffarah for Riba. For takers, returning the amount to due owner if advisable or to general charity if the payer was a Riba based institution and with it Istighfar and Repentance and making more and more of the good deeds, in prayers, fasting Charity, etc. For givers of Riba, obviously the last part only applies, i.e., Istighfar and Repentance and making more and more of the good deeds, in prayers, fasting Charity, etc.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Using State Allowance for Housing Purposes

From: Adzin through Islam online

Sent: Thursday, November 30, 2006 5:18 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

May Allah accept your help. My wife is Muslim almost five years, around the time she entered Islam, her father (non-Muslim) created a Building Saving account for her in a Bank and during this period, he was the one sending a fixed amount to her account. The Building Savings is a government-subsidized product (donation) designed to support housing needs. So there is a State allowance plus a 2% interest from the bank itself. The Interest from the bank we believe it is haram and we will get rid of it inshaALLAH. The question is about the state allowance, what is its status in Islam? Today, alhamdulillah we are not in an urgent need to buy a house, we are planning to move to another country next year inshaALLAH, could we use this money for housing purposes then? An other issue with her father :-), from her birth he is having for her a life insurance so if anything happens to her, her parents will receive some amount of money. As I got to know, interest is associated with it, what do you recommend in this case? I believe that her father has been having good intentions when he created such contracts. However, my wife wants to be in the safe side. We are planning to go to Hajj inshaALLAH this year, please make duaa for us! Thank you! Wassalam

Visitor Notes: My wife is czech and we are living in Czech Republic. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Azdin

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

First, May Allah accept your good intention and your coming Hajj, both of you.

1. Just as you said, the interest the bank gives on this saving account is Riba and it is Haram because it is her account and a Muslim must not earn any Riba. What you do with it, give it to a Muslim charity to be spent on the poor and needy, it is not Haram for them because of their need. (If the account is in her father's name and at any future point of time he gave her a gift, say the total money in such an account, we don't go into what details it consists of, and she can take the gift of her father without asking him about the source as long as it is legal according to the prevailing law in his land).
2. The government subsidy is HALAL, it is permissible because it is given according to law. Any government may give some one some amount of money, as long as it is not a bribe or not to tame an action that hurt others like retention that is done by American CIA, that giving is permissible and accepting it is also permissible in Shari'ah. That is you can use this government subsidy for any purpose, of course within the law.
3. The insurance policy: Most life insurance policies have interest element in them that make them not permissible for Muslims. In the case of your wife, it is not her policy, she is not the owner of of the policy nor the beneficiary. It is her family's policy, and her parents are not required to follow the terms of our religion. Your wife has no sin at all in regard of the interest element in this life insurance and she does not benefit from it any way as the benefits will be received if she dies. This policy may have a clause, that is typical in many insurance policies that says: should the insured stay alive after a number of years, the face value of the policy will be paid to her. If the policy has such an article when your wife receives the amount of the policy she will then be required to give away to Muslim charity the accumulated interests in this amount (this is easily known and you get this info from the insurance policy, it may also be mentioned in the contract itself.). In other words, she can take the amount paid by her father plus the return on it if it was invested in permissible manners.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Claiming Mark up of Islamic Finance as Interest for Tax Deduction

Subject: Claiming interest deduction in leasing/purchase

From: Zaid

Sent: Monday, December 11, 2006 11:35 PM

Question

I want to know how to lease option a house but have the owner structure the contract so that there is no interest in it. And still have the seller benefit by being able to write off "interest" in his taxes and benefit from not getting the full amount all at once

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Zaid,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Now I understand the question, thanks to your explanation and the attached form.

The way to do Islamic seller financing is to sell at a price that includes the mark up. Reporting to IRS can be as financial charge, if they call any financial charge interest that is their problem.

Fulfilling the requirement of implied rate of interest, schedule of amortization and what not can be done with the word ""financial charge"" which is taken in the conventional context as interest but it is permissible in the Islamic context as part of the price. You will have to use the same forms that the IRS require for interest, and that is ok as long as the contract is clear being not a loan but a deferred price. Living in this country and any Western country that is saturated with interest, although they claim being Christian! We have to use words that have double meaning in regard to financing because the Islamic finance is not one that provides credit free but it is one that refuses to provide it on lending basis as loans do not create money!

If you want to do it the right way, you need a lawyer who can cooperate with a person like me to formulate a contract form that is both within the laws here and within the Shari'ah too. It can be done but it cost a fortune and only banks who will make many contract out of it can invest in this exercise.

For you what I suggest is: make a draft on the basis of what I mentioned to you and the form you sent me and email it to me, I may suggest certain changes and we'll go from there.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf
